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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 746 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

BABUBHAI KIKABHAI PATEL

Appearance:

MR MUKESH PATEL Ld. APP for Petitioner

MR BA SURTI for Respondent No. 1

NOTICE SERVED for Respondent No. 2

MR ZUBIN F BHARDA for Respondent No. 3

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 28/07/2000

ORAL JUDGEMENT

This acquittal appeal arises from impugned order of conviction and sentence dated 18.6.88 rendered by the learned Judicial Magistrate First Class, Chikhali in

Criminal Case No. 919/1987 against first three accused sentencing them to undergo simple imprisonment till the rising of the court and to pay Rs. 1300/ each as fine, in default, to undergo simple imprisonment for a period of three months each.

It would appear from the record of the case that accused no. 1 was the retailer and the accused no. 2 and 3 were whole-sellers. Accused no. 8 and 9 were the manufacturers, against whom learned Magistrate has directed the trial to proceed.

It was the prosecution case that on 16.6.87 accused no. 1 was dealing in sale of edible oil and he had displayed 4 sealed tins of groundnut oil for sale. At that point of time, the Food Inspector visited his shop and made accused no. 1 to open the seal and supply 400 grams of groundnut oil. Accused no. 1 obeyed the direction and supplied 400 grams of groundnut oil by breaking up sealed tin. Food Inspector being the complainant sent the portion of the groundnut oil so purchased for analysis by the expert of Food and Drugs Laboratory at Vadodara. The Public Analyst there found that the sample was adulterated inasmuch as that showed presence of castor oil in the groundnut oil. When the matter went before the learned Magistrate, first three accused while pleading guilty asserted that they had purchased sealed tins of groundnut oil from the manufacturer under warranty and the tins were meant for being sold as such and yet they pleaded guilty in order to save themselves from undue hardship.

When this appeal came up for hearing, Mr Mukesh Patel learned APP submitted that instead of minimum sentence provided by the provisions contained in Sec. 7, read with section 16 of the Prevention of Food Adulteration Act, 1954, the learned Magistrate has illegally indulged into plea bargaining and has imposed the sentence as aforesaid. Although, the submission of learned APP against impugned order of sentence would have held good, following circumstances would call for no interference with the impugned order :

1) It was the case of the first three accused that the sealed tins were purchased under warranty and were meant for re-sale and the Food Inspector knowing that the sealed tins were displayed for sale got one of the sealed tins broken up for taking supply of 400 grams of groundnut oil for the purpose of analysis.

2) The standard prescribed under A.17.03 under the Prevention of Food Adulteration Rules 1955, are not violated, as can be seen from the report of the Public Analyst. However, it indicates presence of castor oil in the groundnut oil. Despite such finding, the Public Analyst has stated that the sample does not conform to the standards prescribed under the Rules. This is apparently contradictory on the face of the report.

3) The complainant was present at the time when there was plea bargaining before the learned Magistrate and he ought to have pointed out that the minimum sentence ought to have been imposed when the accused pleaded guilty to the charge, which he failed to do. Such circumstance was considered by this Court in the case of C.M. Rao, Food Inspector vs. Rohitkumar Kanchanlal Bhavsar & Ors., reported in XXV (2)1994 GLR p. 1638, and the learned Single Judge of this Court did not interfere with the sentence which was less than minimum sentence in that case.

4) Learned Magistrate has proceeded with the trial of the matter against the manufacturers, namely accused no. 8 & 9.

Bearing in mind the aforesaid facts and circumstances of the case, I find it futile to remand the matter to the learned Magistrate in so far as the first three respondent-accused persons are concerned.

In that view of the matter, no interference with the impugned order is called for.

In the result, this appeal is dismissed.

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